IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1217 of 1990

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPORATION - Appellant(s)
Versus
KALPANABEN S MAKWANA - Respondent(s)

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Appearance :
MR NIKHIL KARIEL for TANNA ASSOCIATES for Appellant(s) : 1,
MR DAXESH MEHTA for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 05/10/2007

ORAL JUDGMENT

Mr.Mehta states that he has instruction to appear for the respondent-claimant, however though, he has not yet filed the appearance on account of the ill-health of the respondent.

The appellant-Ahmedabad Municipal Corporation has preferred the present Appeal under Section 110D of the Motor Vehicles Act, 1939 against the judgment and award dated 29th August, 1989 passed by the Motor Accident Claims Tribunal in Motor Accident Claim Petition No.42/1987. The respondent is the original claimant.

The respondent-claimant was, at the relevant time, serving in the College of Nursing at Civil Hospital as Clinical Instructor. On 5th August, 1986 when she was commuting on a Moped, a two-wheeler, she was hit by the Corporation bus bearing registration no. GTA 8526. In the resulting fall, she suffered injuries for which she had to be treated at the Civil Hospital as indoor patient from 5th August, 1986 to 30th August, 1986. She also had to undergo follow up treatment. She filed the above referred Claim Petition No.42/1987 for compensation in the sum of Rs.1,50,000=00. According to her, the accident in question had occurred on account of rash and negligent driving by the driver of the Corporation

bus. The Corporation was, therefore, vicariously liable to pay compensation to the claimant.

The claim was contested by the Corporation. It was the case of the Corporation that the accident in question had occurred on account of the rash and negligent driving by the claimant. Though she was commuting on a two wheeler, she was driving in the middle of the road and was frequently changing the lanes.

The Tribunal held that it was the bus driver who was rash and negligent and not the claimant. Considering the age of the claimant and the nature of injuries suffered by her, the Tribunal awarded compensation in the sum of Rs.1,05,500=00 with interest @ 10% per annum on condition that the amount of compensation be deposited within three months. In the event the amount were not deposited within three months as directed, the rate of interest would be 15% per annum.

Mr.Kariel has assailed the impugned judgment and

award. He has submitted that the Tribunal has erred in holding that it was the bus driver who was rash and negligent and not the claimant. He has submitted that the Tribunal ought to have attributed atleast part of the negligence to the claimant. He has also submitted that the compensation awarded to the claimant is excessive and needs to be reduced.

It has come on record that the claimant had to undertake treatment at the hospital as an indoor patient for 25 days and she had to take leave of absence for some 76 days. She had suffered permanent disability to the extent of 56 percent and she was 38 years of age. Considering the actual loss of income, the loss of earning capacity and the pain and shock suffered by the claimant, the compensation in the sum of Rs.1,05,500=00 awarded by the Tribunal cannot be said to be excessive as submitted by Mr.Kariel.

As to the contributory negligence, I agree with the Tribunal that the accident had occurred on account of the rash and negligent driving by the driver of the Corporation bus.

No other contention is raised before me. The Appeal is dismissed with cost.

The amount invested in fixed deposit in nationalised bank be permitted to be withdrawn by the claimant.

(Ms. R.M.Doshit, J.)

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